



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD) .No.9161 of 2020

and

W.M.P. (MD) .Nos.8373 and 8375 of 2020

M.C.Lopez

... Petitioner

Vs.

1.The District Collector,
Kanniyakumari District,
Nagercoil.

2.The Revenue Divisional Officer,
Patmanapuram,
Kanniyakumari District.

3.The Tahsildhar,
Kalkullam Taluk,
Kanniyakumari District.

4.The Revenue Inspector,
Colachel Firka,
Kalkullam Taluk,
Kanniyakumari District.

5.The Executive Officer,
Reetapuram Town Panchayat,
Kanniyakumari District.

... Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records, pertaining to the impugned notice issued by the 4th respondent, dated 30.07.2020, under Section 7 of the Tamil Nadu Encroachment Act, as not valid and void and to quash the same.

For Petitioner : Mr.F.X.Eugene

For R1 to R4 : Mr.R.Murugan
Additional Government Pleader

For R5 : Mr.M.Karuppasamy



O R D E R

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

The petitioner claims to be the successor in interest in respect of an alleged unauthorised religious structure put up on Simon Colony in Survey No.204/1, which is classified as Government Poromboke Salt Pan (Arasu Poromboke Uppalam) ad-measuring to an extent of 0.07.75 ares (19.143 cents), an asbestos sheet shed and church, came forward to file the writ petition.

2. A perusal of the affidavit filed in support of this petition, would disclose among other things that the forefathers of the petitioner, had encroached upon nearly 35 cents of land in the said survey number and initially put up a prayer hall and slowly it has become a religious structure, and according to the petitioner, it is in existence nearly a century, and the people from other religions also used to make a visit to get the blessings of the presiding deity.

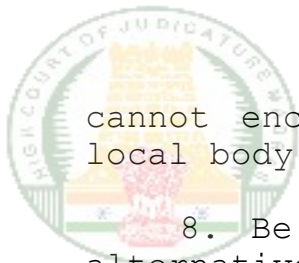
3. The learned counsel appearing for the petitioner would submit that in the light of the fact that the said religious structure is in the said survey number nearly a century, and that on account of the wrong classification of the land as Government Poramboke Salt Pan and on erroneous presumption and assumption, the impugned notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, came to be issued and also pointed out that the petitioner did not receive the notice under Section 7 of the said Act and the fourth respondent has failed to adhere to the mandate cast upon the said statute and prays for interference.

4. Mr.R.Murugan, learned Additional Government Pleader accepts notice on behalf of the respondents 1 to 4 and Mr.M.Karuppasamy, learned counsel accepts notice on behalf of the 5th respondent.

5. The learned Additional Government Pleader appearing for the respondents 1 to 4 would submit that even as per the own admission of the petitioner, it is a clear case of encroachment and to evict and clear the encroachment under due process of law, by invoking the provision of the Tamil Nadu Land Encroachment Act, 1905, have to be followed, and in the present facts and circumstances, the writ petition is *per se* not maintainable and prays for disposal of the same.

6. This Court has carefully considered the rival submissions and also perused the materials placed before this Court.

7. Now a days, it has become a routine argument or fashion for the encroachers to make a plea that it is for the official respondents to follow the due process of law before evicting them, overlooking the fact that as a lawful and dutiful citizen, they



cannot encroach upon the public land or the land belonging to a local body.

8. Be that as it may, the petitioner is having an effective alternative remedy under Section 10 of the Tamil Nadu Land Encroachment Act, 1905, and if he is so advised, he may be at liberty to invoke the appeal remedy before the competent forum.

9. In the result, the Writ Petition is dismissed, subject to the above observations. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

akv/vsd

Note : In view of the present lock down owing to COVID -19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Kanniyakumari District, Nagercoil.

2.The Revenue Divisional Officer,
Patmanapuram,
Kanniyakumari District.

3.The Tahsildhar, Kalkullam Taluk,
Kanniyakumari District.

4.The Revenue Inspector,
Colachel Firka, Kalkullam Taluk,
Kanniyakumari District.

5.The Executive Officer,
Reetapuram Town Panchayat,
Kanniyakumari District.

+1 CC to M/s.F.X. EUGENE, Advocate (SR-14060[F] dated 14/08/2020)

W.P. (MD) .No.9161 of 2020

13.08.2020